SUPREME COURT, U. S

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MICHAEL RODAK, JR., CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-371

DAVID RANDLE CORDLE,
Petitioner

—VS—

STATE OF ALABAMA,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

BRIEF FOR RESPONDENT

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA BRIEF FOR RESPONDENT

QUESTION PRESENTED FOR REVIEW

Do the Due Process and Equal Protection Clauses of the 14th Amendment of the United States Constitution require that an indigent defendant be provided a free transcript of a preliminary hearing in a State where transcripts of preliminary hearings are not required and neither the State nor the defendant is entitled to one.

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process and Equal Protection Clauses of the 14th Amendment.

STATEMENT OF THE CASE

The Petitioner David Randle Cordle was indicted by the Montgomery County, Alabama Grand Jury in February, 1972 for the offense of Rape committed on the night of November 25, 1971. The Petitioner's indictment came after extensive questioning by police on several occasions in December, 1971.

A preliminary hearing was held on January 12, 1972 at which time the Honorable William P. Haynie, Jr. was appointed by the Court to represent David Randle Cordle. Defense Counsel requested that the accused be provided with a free transcript of all pertinent testimony given at the preliminary hearing. This request was denied. The petitioner now alleges that this denial violated his rights under the Equal Protection Clause of the Constitution.

The Petitioner was arraigned before the Circuit Court of Montgomery County on the 15th day of March, 1972. He was attended by his attorney at the arraignment and at that time he pled not guilty. On the 24th day of February, 1972, the defendant filed a Motion to Quash the indictment against him and the Motion was denied by the Honorable Richard P. Emmet, Circuit Judge of Montgomery County on February 25, 1972. On February 24, 1972, the defendant filed a "Motion to Determine Sanity." This Motion was also denied on the following day by Judge Emmet.

On April 12, 1972, the Circuit Court appointed Hon. Sam W. Taylor to represent the defendant in this cause and on May 16, the defendant was again arraigned before the Circuit Court and again pled not guilty. On June 6, 1972, the defendant was brought to trial before a jury of 12 who found the defendant "guilty as charged and fixed his punishment at 99 years and one day of imprisonment." On that same

day, the Court considered and adjudged that the defendant was guilty as charged in the indictment. On August 2, 1972, the defendant filed Notice of Appeal with the Circuit Court of Montgomery County and subsequently, appealed his conviction to the Alabama Court of Criminal Appeals. The Court of Appeals upheld the conviction on April 9, 1974. The petitioner applied for rehearing and the application was overruled on May 21, 1974. The Petitioner then filed Writ of Certiorari to the Alabama State Supreme Court and the writ was denied August 8, 1974. The petitioner applied for rehearing on the Writ of Certiorari and the rehearing was denied. The petition for Writ of Certiorari to this Court was filed on October 3, 1974.

REASONS FOR DENYING THE WRIT

In the State of Alabama there is no law requiring that a transcript of preliminary hearings be kept and neither the prosecution nor defense is entitled to such a transcript as a matter of right. *Williams v. Jasper*, 287 Ala. 237, 250 So.2d 701. In *Williams, supra*, The Alabama Supreme Court discussed at length recent decisions of the United States Supreme Court dealing with the rights of defendants at preliminary hearings. It was the feeling of the Alabama Court that neither *Roberts v. LaVallee*, 389 U. S. 40, 88 S.Ct. 1940, 19 L.Ed. 2d 41 (1967) nor *Coleman v. Alabama*, 389 U. S. 1 (1970) requires a transcript of preliminary hearings for indigents. The Alabama Court felt that the holdings in *Roberts, supra*, had no bearing on the issue to be resolved in the instant case. In *Roberts*, a New York case, an indigent claimed that his constitutional rights were violated in that he was denied equal access to a transcript of his preliminary hearing. New York had at that time a statute requiring the State to furnish such a transcript on payment of a "fee."

The pertinent language of the holding in *Roberts* is:

> "Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution, that 'to interpose any financial consideration between an indigent prisoner of the State and his exercise of a State right to sue for his liberty is to deny that prisoner the equal protection of the laws.' We have no doubt that the New York statute . . . as applied to deny a free transcript to an indigent, could not meet the test of our prior decisions."

It is obvious that the situation in *Roberts* differs substantially from the situation now before the Court. The defendant had equal access to all instruments needed to vindicate his legal rights. The State has no more right nor lack of right to a transcript than does the petitioner. As petitioner has pointed out to the Court, the State Legislature repealed the statutory requirement that transcripts of preliminary hearings be made. Title 15, Section 135 et seq., repealed by Act 1106, September 12, 1969).

The petitioner also contends in addition to the violation of his right to equal protection, that his rights to due process were also denied. He cites *Griffin v. Illinois*, 351 U. S. 12, 76 S.Ct. 585, 100 L.Ed. 891 and *Britt v. North Carolina*, 404 U. S. 226, 92 S.Ct. 431, 30 L.Ed 2nd. 400, (1971). It should be pointed out that both of these cases deal with the right of indigents to transcripts of the trial record and do not deal with the right to a record of a preliminary hearing. Petitioner makes a vague allegation that the preliminary hearing transcript is needed because the only eye witness to the crime

testified at the hearing. The petitioner was represented by counsel at the preliminary hearing in compliance with *Coleman v. Alabama*, 399 U. S. 1, 90 S.Ct. 1999, 26 L.Ed. 2d. 387 (1970) and his counsel was aware of all the testimony that took place at that time. The petitioner has at all times been aware of the nature of the testimony that the eye witness gave at the hearing in question. Certainly, the failure to transcribe such testimony was not the sort of deprivation of liberty which constitutes a due process violation.

CONCLUSION

It is the contention of the State of Alabama that no holdings of the United States Supreme Court require a State to furnish an indigent with a free transcript where there is no statute requiring such a transcript to be furnished to anyone. Petitioner's rights to due process were not violated because he was represented by counsel at the preliminary hearing. Therefore, we respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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Attorney General of Alabama

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SAM L. WEBB, JR.
Legal Research Aide of Alabama
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Walter S. Turner, one of the attorneys for respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of November, 1974, I served requisite copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari on the Honorable Frank W. Riggs, by placing said copies in the mail, postage prepaid, and properly addressed to him as follows: Post Office Box 1047, Montgomery, Alabama 36102.

WALTER S. TURNER
Chief Assistant Attorney General
of Alabama